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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

In re MICHAEL M., a Person Coming Under the
Juvenile Court Law.

STANISLAUS COUNTY COMMUNITY
SERVICES AGENCY,

Plaintiff and Respondent,

v.

MICHAEL M.,

Defendant and Appellant.

F065905

(Super. Ct. No. 516229)

OPINION

THE COURT*

APPEAL from an order of the Superior Court of Stanislaus County. Ann Q.
Ameral, Judge.

Pamela Rae Tripp, under appointment by the Court of Appeal, for Defendant and
Appellant.

John P. Doering, County Counsel, and Carrie M. Stephens, Deputy County
Counsel, for Plaintiff and Respondent.

* Before Kane, Acting P.J., Franson, J., and Peña, J.

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Michael M. (father) appeals an order continuing juvenile court jurisdiction over his son, Michael, under Welfare and Institutions Code section 364.¹ Father challenges the sufficiency of the evidence to support the juvenile court's finding that its continued supervision was necessary to protect Michael. We affirm the order.

FACTUAL AND PROCEDURAL BACKGROUND

The Stanislaus County Community Services Agency (the Agency) intervention in this matter began the day Michael was born in January of 2012. He tested negative for controlled substances, but his mother, Gabriella G. (mother) had a long and unsuccessful history with the Agency and the juvenile court. Mother had five other children, none of whom resided with her. Her two oldest children were removed in 2005 and, after mother failed reunification services, placed permanently with their father in 2007. A daughter was removed in 2009 and mother's parental rights terminated after she failed to reunify. Twin sons born in 2010 were removed from mother's care and she was denied services.

Upon Michael's birth, a preliminary investigation of father determined that he had no previous child protective service history; he had established a residence away from mother; and he had all necessary items to care for a baby. It was determined that, while mother posed a risk to the child, Michael could be safely released to father's care. A section 300 petition was filed to remove Michael from mother's care and custody.

The child was detained from mother, but allowed to remain with father on the condition that mother not be allowed contact with Michael unless approved by a social worker. Visitation with mother was to be three times a week at the Agency.

The report prepared in anticipation of jurisdiction/disposition recommended that Michael be declared a dependent and removed from mother's custody but remain with

¹ Statutory references are to the Welfare and Institutions Code.

father under family maintenance services. Because father expressed a desire to continue his relationship with mother and have her move into his home, reunification services were recommended for mother.

Further investigation of father revealed that he had a very lengthy history of criminal behavior and substance abuse. He had begun using drugs at age 13, but claimed to have stopped with treatment in 2009. But he had a drug arrest and conviction in 2010, with a 36-month probation sentence. Father had 12-year-old twin daughters who lived with their mother.

Father and mother became a couple in January of 2011. Father claimed that he did not need or want services, only that mother should “come home and be a mother.” Father believed it would be easier for her to complete her services if she were home with the baby. Although father did not want any Agency involvement for himself, he believed that mother should have some Agency involvement “due to her history.”

The social worker made a visit to father’s home 12 days after Michael was born. Although the visit was scheduled, father had forgotten about the visit and asked that the social worker call right before coming the next time. Mother was at father’s home cooking in the kitchen, but Michael was down the street with a babysitter. The Agency recommended that father participate in substance abuse testing as his only service plan element.

At the March 5, 2012, contested jurisdiction/disposition hearing, father objected to family maintenance services for himself because he felt like “the government” was “kind of stepping in where there’s no need to step in.” Father testified that, if the court allowed it, he would be “more than willing” to have mother come home immediately and “be a mom.” He acknowledged that, although he was a recovering addict and working in a drug treatment program at the time of mother’s pregnancy with Michael, he did not realize that mother was using drugs while pregnant until she told him so. They moved in together the following month. Father claimed that he himself last used drugs in 2009 and

that a 2010 felony drug conviction was not his, but because of his “history” no one would believe him.

The juvenile court found Michael a dependent of the court and removed him from mother’s custody. It approved a service plan for both mother and father, which left Michael in father’s custody with family maintenance services. The juvenile court gave the social worker discretion to allow mother’s visits to occur in father’s home, when appropriate. Interim review was set for June 8, 2012; six-month review for August 31, 2012.

Over the following three months, mother continued to attend her programs, completed substance abuse services, and was moving into her aftercare program. Father drug tested negative. Michael was healthy and well cared for, and mother had twice weekly visits in father’s home.

At the June 8, 2012, interim review hearing, father testified that he and mother were “friends” and, “[a]s of right now,” did not intend to be a couple. But father said that mother could come live at his home for a trial visit with Michael. The social worker was hesitant to recommend a trial visit in father’s home if the goal of father and mother was not to be a couple. Father said that he did want Michael to see him and mother “interacting” and did not mind mother being in the home. The juvenile court suggested and issued an order that, at the social worker’s discretion, mother could provide daycare for Michael while father was at work.

After the hearing, the social worker informed father that day-long visits would begin in a week, as soon as she was available to monitor the situation. Father was worried about mother’s reaction to the delay as she was “fragile” and had a difficult time dealing with things “that don’t always go her way.” A transition meeting was scheduled to take place before the first trial visit.

But 10 days later, before such a transition meeting could occur, father informed the social worker that he thought mother was using drugs again and he did not want her

to move in if she was. Father was concerned that mother would try to flush the drugs from her system to avoid a positive drug test. A subsequent hair follicle drug test for mother came back positive for methamphetamine and propoxyphene. The social worker informed mother that she could no longer be in father's home with the baby and needed to get a new substance abuse assessment. Mother continued to deny use.

On July 9, 2012, father informed the social worker that he and mother were not in a relationship and were no longer working toward one at that time. When the social worker contacted mother to encourage her to do the substance abuse assessment, mother insisted that she should be allowed in father's home when the baby was not there. Mother refuted father's claim that they were not in a relationship.

Mother called the social worker to announce that she had her "engagement ring" back and did not know why she was not allowed into the house. Father explained to the social worker that he was willing to "stay engaged" to mother if she was working on her drug treatment and other issues; if not, he did not want a relationship with her. At a baby visit at the Agency when father did not come into the visiting room, mother became upset and got into a loud, verbal altercation with father.

On July 16, 2012, father telephoned the social worker to say that mother was four and a half months pregnant. Mother said it was father's child; he was not "100% positive." According to father, the two were still engaged.

The following day, mother was admitted to a residential treatment facility. She tested positive for cocaine and alcohol. A day later, when told that visits with Michael would not include father, mother became very angry and left the treatment facility.

On July 18, 2012, father said that he was going to continue to stay engaged to mother and support her, but he was not sure how much longer he could do so. By the following day, father was "completely done" with mother and informed her of his decision.

On July 24, 2012, mother told the social worker that she continued to see father when Michael was not around. Father refuted her statement, saying mother was a “walking time bomb” and “using everyday.” Mother then claimed that they were in a relationship, but that father had been threatened by the social worker that his case would not be dismissed at review if he was in the relationship. Mother continued to deny drug use and refuted any angry outbursts described by service providers.

The following day, father told mother in front of the social worker that they were not a couple and that she needed to work on her recovery and case plan before they could again discuss their relationship. Mother insisted that this was a lie as the two of them had been together the night before. Father denied mother’s accusation, and showed the social worker his cell phone with around 30 missed calls from mother the night before. Father said he had spent the night in a motel to avoid mother, who he knew would try to come to his house.

Mother was admitted to another residential treatment program on August 7, 2012. The following day, the facility contacted the social worker to ask what mother and father’s relationship was, as father had been there a number of times over the two days. Father had wanted to take mother to a doctor’s appointment, but the facility was told she was to be transported only by the Agency.

Father told the social worker he was afraid that if they did not let mother go to her appointment, she would leave the program. He had taken her snacks and personal necessities and rescheduled an appointment for her.

That same day, mother came for a visit with Michael. She was dirty, sick, uncooperative and hostile with staff. Father included himself in the visit and gave a supervisor a gold necklace to secretly give to mother. A week later, father was seen bringing food for mother at her doctor’s appointment.

When informed of the recommendation for continued family maintenance services, father was unhappy because he claimed he had done everything that was asked

of him. The social worker explained the concern of father's inability to be straightforward with mother and to stick to his decision not to be in a relationship with her, noting the food and jewelry he bought her. Father said he did that because he cares and she has no one else to help her. The social worker explained that father's vacillation made it difficult to ensure that he would be able to protect Michael from mother if the Agency were to dismiss the case.

On August 23, 2012, the supervisor from mother's drug treatment program stated that it appeared that father and mother were in a relationship. Mother continued to want father to provide her transportation to appointments, in contravention to the Agency's guidelines. The program contemplated discharging mother because she had gotten more and more restrictive instructions from her doctor, requiring many hours of rest each day, effectively preventing her from participating in the program.

Four days later, on August 27, 2012, mother was discharged. Father had picked up mother from the emergency room the day before, although he claimed not to know why she was there. He again stated he was "done" with mother and was not going to help her anymore.

The report prepared in anticipation of the six-month review recommended that mother's services be terminated and that father receive additional family maintenance services and be required to participate in co-dependency counseling. A contested review hearing was set for September 21, 2012.

At the contested hearing, mother submitted an offer of proof, which was accepted, that she had entered a residential treatment program for pregnant women three days earlier. She tested negative at entry. Father's counsel argued that father had kept Michael safe and that he did not need co-dependency counseling.

After argument, the juvenile court terminated mother's services and maintained jurisdiction with Michael placed with father with an additional six months of family maintenance services. Father was to have co-dependency counseling. Mother's visits

were reduced to one visit per week and she was to provide her own transportation to the visits.

The juvenile court specifically stated that father was giving mixed messages about whether his relationship with mother was really over. It further felt that he was telling the social worker it was over because he believed that was what he needed to say, but that it was not truly over. The juvenile court found that, because of the recent history between father and mother, if supervision were withdrawn, the circumstances that initially led to jurisdiction would again exist. !(RT 69)!

DISCUSSION

Father contends that the juvenile court erred when it found that it was necessary to maintain jurisdiction in this case. We disagree.

In order to address father's claim, we must first determine which statutory scheme controls. The juvenile court held the review hearing pursuant to section 364.

Generally, when a child has been removed from the physical custody of his or her parents, the statutory scheme governing dependency proceedings obliges the juvenile court to place the child "in a safe home or setting, free from abuse or neglect." (*In re Adrianna P.* (2008) 166 Cal.App.4th 44, 55.)

"Section 364 applies when a ... court determines that jurisdiction under section 300 is appropriate, but 'the child is not removed from the physical custody of his or her parent or guardian'" (*In re Janee W.* (2006) 140 Cal.App.4th 1444, 1450-1451; § 364, subd. (a).) Section 364 has no application where a child is placed in the home of a parent with whom the child did not previously reside after being removed from the home of the other parent. (*In re Nicholas H.* (2003) 112 Cal.App.4th 251, 263-264.) Under section 364, at six-month intervals following the disposition hearing, the court is obliged to determine "whether continued supervision is necessary," and must terminate its jurisdiction unless the social services agency proves "by a preponderance of evidence that

the conditions still exist which would justify initial assumption of jurisdiction under [s]ection 300” (§ 364, subd. (c).)

In contrast to section 364, section 361.2, governs placement when the child has been removed from the home of a “custodial parent” – that is, a parent who had physical custody of the child – but has a “noncustodial parent,” that is, “a parent ‘with whom the child was not residing at the time that the events or conditions arose that brought the child within the provisions of Section 300.’” (*In re Adrianna P.*, *supra*, 166 Cal.App.4th at p. 55 & fns. 5, 6; § 361.2, subd. (a).) In a case where a child is removed from the custodial parent and placed with a non-offending custodial parent, the juvenile court may offer services to either or both parents. (§ 361.2, subd. (b)(3).) In such a case, review is held pursuant to section 366, in which the juvenile court must consider “the safety of the child” and determine “[t]he continuing necessity for and appropriateness of the placement.” (§§ 361.2, subd. (b)(3); 366, subd. (a)(1)(A).)

Here, the juvenile court removed custody from mother, but neither removed, nor granted custody to father, but instead allowed Michael to remain with father in a presumption of custody. In this case, the juvenile court may have more appropriately proceeded under section 361.2 than section 364. In any event, it does not follow that the juvenile court committed reversible error.

Although section 361.2 and section 364 address different situations, the need-for-supervision inquiry described in section 364 is also applicable when a child has been placed with a noncustodial parent under section 361.2. (*In re Sarah M.* (1991) 233 Cal.App.3d 1486, 1496-1497, disapproved on another ground in *In re Chantal S.* (1996) 13 Cal.4th 196, 204.) The need-for-supervision inquiry gives the juvenile court an opportunity to assess and, if necessary, modify its course of action under subdivision (b) of section 361.2. (*In re Sarah M.*, *supra*, at pp. 1496-1497.)

In reviewing the sufficiency of the evidence from a child dependency proceeding on appeal, this court looks to the entire record for substantial evidence to support the

findings of the juvenile court. (*In re Austin P.* (2004) 118 Cal.App.4th 1124, 1134; *In re N.S.* (2002) 97 Cal.App.4th 167, 172.) We do not consider the credibility of witnesses, weigh the evidence or attempt to resolve conflicts in the evidence. Rather, we draw all reasonable inferences in support of the findings and view the record favorably to the juvenile court's order. (*In re Casey D.* (1999) 70 Cal.App.4th 38, 52-53.) Father has the burden of showing there is no evidence of a sufficiently substantial nature to support the findings. (*In re Geoffrey G.* (1979) 98 Cal.App.3d 412, 420.)

Here, the evidence showed that the court initially assumed jurisdiction under section 300 because mother had a lengthy history with the Agency. While she tested negative for drugs at the time, she had a long history of drug abuse, mental health issues, domestic violence and three failed child welfare cases involving five children, posing a risk to Michael. Her condition at the review hearing was far worse than when jurisdiction was assumed. By that time, she was emotionally volatile and had seriously relapsed on drugs, to the point that she was exposing yet another unborn child to dangerous substances. She was also obsessed with father and her relationship with him and relentlessly pursued that relationship.

While father was drug free and had kept Michael safe, his ongoing and entangled relationship with mother was a concern to the juvenile court. While father initially stated that the two were not a couple, the social worker in a home visit shortly after Michael's birth, found mother in father's home while Michael was not there. And, while father insisted they were not a couple, mother became pregnant around March of 2012, just as the case had gone to disposition. By June, when mother was believed to be doing well with her services, father again said the two were not a couple, but he would allow her to move into the house to show Michael that they were a family. Days later, father reported mother's drug use to the Agency and claimed that he would have nothing to do with her if it endangered Michael or his custody of him. Even so, father continued his relationship with mother, bringing her food and gifts, taking her to appointments, etc. Although

father claims that he did these things because mother was pregnant and had no one else, the reality is that, by the time of the six-month review hearing, father was even more entangled with mother than he was at the outset of the case and mother was even more certain that the relationship existed. As stated by the juvenile court, “[T]here’s just been too much that has been going on and it’s been too recent for this Court to believe that the circumstances which justified initial assumption of jurisdiction no longer exist or that such circumstances are not likely to exist if supervision is withdrawn.”

Until mother is either no longer in the picture or has resolved her many issues, or father has demonstrated for a significant period of time that he can resist mother’s manipulations, there is a continued threat that Michael would be exposed to mother without proper supervision. Michael, at six months, was particularly vulnerable and needed to be monitored for six more months in order to assess any further risk and allow continued stabilization of the family. In this regard, the juvenile court could properly exercise its authority to make an order that protects the safety and well-being of Michael while he resided in his father’s home. (See *Bridget A. v. Superior Court* (2007) 148 Cal.App.4th 285, 309.)

We find that substantial evidence supports the court’s order continuing its supervision.

DISPOSITION

The order is affirmed.